

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35716/35717

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 596
	)	
Plaintiff-Respondent,	)	Filed: August 31, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
KALONIE LOPEZ,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Judgments of conviction and concurrent unified sentences of four years with one and one-half years determinate, and five and one-half years with two years determinate, for two counts of grand theft, and concurrent unified sentence of seven years with two and one-half years determinate for forgery, affirmed. Orders denying I.C.R. 35 motions, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

In cases consolidated on appeal, Kalonie Lopez was convicted of two counts of grand theft, Idaho Code §§ 18-2403(3)(4), -2407(1)(b)(3), and one count of forgery, I.C. § 18-3601. The district court imposed concurrent unified sentences of four years with one and one-half years determinate, and five and one-half years with two years determinate, for two counts of grand theft, and a concurrent unified sentence of seven years with two and one-half years determinate for forgery. The district court suspended the sentences and placed Lopez on probation. Subsequently, Lopez admitted to violating several terms of the probation, and the district court consequently revoked probation, ordered the original sentences executed, and retained

jurisdiction. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Lopez's sentences. Lopez filed Idaho Criminal Rule 35 motions, which the district court denied. Lopez challenges the court's decision to relinquish jurisdiction, asserts her sentences are excessive, and asserts error in the denial of her Rule 35 motions.

This Court will not address the first two of these issues because Lopez's appeal is timely only from the orders denying her Rule 35 motions. Idaho Appellate Rule 14(a) requires that a notice of appeal from a judgment of conviction or an order relinquishing jurisdiction be filed within forty-two days from the entry of the order relinquishing jurisdiction. A Rule 35 motion extends the time for filing an appeal from the underlying judgment only if it is filed "within fourteen days of the entry of judgment." I.A.R. 14(a). Here, Lopez's Rule 35 motions were not filed within fourteen days after entry of the judgments of conviction. Therefore, they did not extend the time to contest the original judgments and sentences, nor did they extend the time to appeal from the order relinquishing jurisdiction. *See State v. Alberts*, 124 Idaho 489, 490, 861 P.2d 59, 60 (1993); *State v. Repici*, 122 Idaho 538, 540, 835 P.2d 1349, 1351 (Ct. App. 1992). Lopez's appeal is timely only from the orders denying her Rule 35 motions and our review is, accordingly, limited to review of those orders.

Lopez argues on appeal that denial of her Rule 35 motions was erroneous because her sentences are "illegal." We do not address this argument, however, because it was not raised in the trial court. A claim that a sentence is illegal may not be raised for the first time on appeal. *State v. Howard*, 122 Idaho 9, 930 P.2d 520 (1992).

There thus remain only Lopez's Rule 35 motions as requests for leniency for this Court to consider. However, our review of this issue is also foreclosed because no new information was presented by Lopez in support of her motions. A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). "An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the

presentation of new information.” *Id.* Because Lopez presented no new information in support of her Rule 35 motion, review of the sentence by this Court is precluded.

For the reasons explained above, the Court lacks jurisdiction to consider Lopez’s challenges to her sentences as originally imposed or her challenge to the order relinquishing jurisdiction. The district court’s orders denying Lopez’s Rule 35 motions are affirmed.